

## **EXHIBIT 3**

IN THE DISTRICT COURT OF CANADIAN COUNTY  
STATE OF OKLAHOMA

JAMES MICHAEL DENNARD,

Plaintiff,

v.

SAFECO INSURANCE COMPANY  
OF AMERICA,

Defendant.

Case No. CJ-

2017-263

FILED

MARIE HIRST COURT CLERK  
CANADIAN COUNTY, OKLAHOMA

MAY - 4 2017

PETITION

BY

DEPUTY

COMES NOW Plaintiff James Michael Dennard and for his cause of action against Safeco Insurance Company of America alleges and states as follows:

Jurisdiction and Venue

1. Plaintiff James Michael Dennard is a citizen of the State of Oklahoma and a resident of Mustang, Canadian County, Oklahoma.
2. Defendant Safeco Insurance Company of America ("Safeco"), a member of the Liberty Mutual Group, is an insurance company with its corporate headquarters and principal place of business in Boston, Massachusetts. Safeco is licensed and engaged in the business of insurance in the State of Oklahoma, including Canadian County.
3. The events that give rise to this action occurred in Mustang, Canadian County, Oklahoma.
4. Jurisdiction and venue are proper in this Court.

Factual Background of Rear-End Collision

5. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth herein.

6. On the afternoon of March 30, 2012, Dennard was in his truck parked on the shoulder of his lawn in front of his home at 13012 S.W. 51<sup>st</sup> Street in Mustang, speaking with his landscaper who had just finished mowing his lawn. As he was speaking with his landscaper through the passenger side window while in the driver's seat, he was rear-ended by a vehicle driven by Kelly Renee Merka.

7. Upon impact, Dennard was turned sideways in the cabin of the truck and immediately felt tremendous pain in his neck and upper back as well as his right shoulder.

8. As the pain continued to increase over the next couple of weeks, in mid-April 2012, Dennard consulted with Ross E. Pope, D.O. with complaints of pain and numbness below his right shoulders. The treatment notes indicate that these are "new problems." [Treatment Notes, Bates No. 2012, attached as Exhibit 1]. Dr. Pope treated Dennard with osteopathic manipulative therapy ("OMT") to multiple body parts, including his neck and upper extremities, specifically naming the right shoulder. *Id.* Finally, on May 31, 2012, Dr. Pope's notes indicate that Dennard's chief complaint was of pain in his right shoulder and shoulder blade. [Treatment Notes, Bates No. 2014, attached as Exhibit 1].

9. Dennard's pain to his neck, upper back, and right shoulder continued despite the conservative treatment plan, and, as a result, he was referred to Jonathon D. Stone, D.O., for epidural steroid injections and trigger point injections. Dr. Stone's notes from May 18, 2012 state: "He says that he was parked on his street and was rearended. He says that the neck and thoracic pain started after that a few weeks ago." Dr. Stone administered trigger point injections to the right upper trapezius, levator scapula and rhomboid muscles during that visit. [Treatment Notes, Bates No. 2046, attached as Exhibit 1]. Dr. Stone's treatment notes from Dennard's next visit on June 1, 2012, stated the following:

Pt describes the pain as being distributed 100% in the right upper limb. The neck pain radiates to the right posterior shoulder and right anterior shoulder. He says that the periscapular area has improved, but he is still having some upper posterior shoulder pain on the right.

[Treatment Notes, Bates No. 2049, attached as Exhibit 1].

10. Subsequently, on July 19, 2012, Dennard was admitted to Community Hospital to receive an interlaminar epidural steroid injection administered by Dr. Stone. Dennard's admitting documents state that his chief complaint was neck and shoulder pain, and the admitting diagnosis was cervical radiculitis. [Patient History Questionnaire, Bates No. 2069, attached as Exhibit 2]. Dennard received temporary relief from the injection, but his treatment records indicate that he was again complaining of pain in his right shoulder by early September 2012. [Treatment Notes, Bates No. 2018, attached as Exhibit 1].

11. Dennard continued to have regular treatment from both Dr. Pope and Dr. Stone until approximately August of 2013. Dennard also had regular chiropractic treatment with William L. DeLong, D.C., including manipulation, electrical muscle stimulation and hot packs. Dennard began treating with Dr. DeLong in approximately August 2012 and continued until April 2015. Despite Dennard's repeated attempts at conservative treatment, all of the treatments provided only temporary, partial relief to his injuries, which left him with almost daily, chronic pain.

12. In addition, Dennard's shoulder pain continued to worsen, so he was referred to and consulted with an orthopedic surgeon, Dr. Kristopher Avant, on April 13, 2015. An MRI was taken of his right shoulder, which revealed a rotator cuff tear, as well as some impingement, tendinosis, and arthritis. Dr. Avant recommended surgery to repair the rotator cuff tear.

13. On July 23, 2015, Dennard underwent right shoulder arthroscopy with rotator cuff repair, distal clavicle excision, and subacromial decompression.

14. After the surgery, Dennard required approximately five months of physical therapy three times a week for rehabilitation.

**Factual Background of UM Claim**

15. At the time of the collision, Dennard was insured under an automobile liability insurance policy with Safeco, which included uninsured/underinsured motorist ("UM") coverage in the amount of \$250,000 per person and \$500,000 per occurrence. [Declaration Pages, attached as Exhibit 3].

16. In March of 2014, as Dennard's medical bills continued to increase because of ongoing treatment to resolve his injuries, Dennard retained counsel and counsel notified Safeco of a UM claim on behalf of Dennard<sup>1</sup>.

17. Thereafter, on May 6, 2014, Safeco acknowledged Dennard's UM claim. [Letter from Safeco to Carr & Carr, attached as Exhibit 4].

18. Several months later, on November 5, 2014, Dennard's counsel sent Safeco medical bills relating to Dennard's ongoing treatment for his injuries. [Email from Carr & Carr to Safeco, attached as Exhibit 5]. By this point, Dennard had been receiving medical treatment for his injuries for well over a year, including epidural steroid injections and trigger point injections, and his medical bills totaled over \$17,000.

19. Subsequently, on January 15, 2015, Safeco adjuster Amy Abt emailed Dennard's counsel inquiring as to whether Dennard intended to make a UM claim, despite Safeco's previous acknowledgement of Dennard's UM claim and receipt of medical bills relating to his ongoing treatment for his injuries. [Email from Safeco to Carr & Carr, attached as Exhibit 6].  
Dennard's counsel resent the medical bill schedules with the following response:

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<sup>1</sup> Almost immediately after the wreck, Dennard notified his insurance agent of the loss and assumed that it was being communicated to Safeco.

Dear Ms. Abt – Thank you for your communication. I must admit I am a bit at a loss by the last question posed in your letter, i.e. “Do you anticipated a Uninsured Motorist claim will be made?” We put your company on notice of underinsured motorist exposure long ago and were under the impression and assumption that Safeco had been going through the process of evaluating the claim ever since it was asserted. We have been expecting an offer any day, so the fact that you are just now asking if a UIM claim will be made is very troubling....

This is an underinsured claim. We would ask that you evaluate the claim and pay Mr. Dennard what he is owed as soon as possible....He has medical expenses of over \$17,000 to date and lost wages of over \$36,000....I have attached our Schedule A, B and C to help you appreciate the damages. We look forward to a prompt evaluation and offer in this case.

[Email from Carr & Carr to Safeco, attached as Exhibit 7].

20. Safeco responded to Dennard’s counsel’s communication on February 9, 2015, and stated that it could not evaluate Dennard’s claim because it had not been presented with a complete demand package. [Fax from Safeco to Carr & Carr, attached as Exhibit 8].

21. Pursuant to Safeco’s request, medical records supporting Dennard’s UM claim, including treatment notes reflecting injury to his right shoulder, were sent by Dennard’s counsel on February 25, 2015. [Email from Carr & Carr to Safeco, attached as Exhibit 9].

22. Safeco also requested support for Dennard’s wage loss claim. [Fax from Safeco to Carr & Carr, attached as Exhibit 10].

23. Next, on May 13, 2015, Dennard’s counsel responded in detail to Safeco’s request for additional information to support his wage loss claim. The letter set forth Dennard’s income as a homebuilder for the three years before the collision at issue in this case, and for 2012 – the year of the collision. Dennard’s counsel informed Safeco that:

Based upon a three year average leading up to 2012, Mr. Dennard averaged income of over \$61,000 per year. In 2012, his earnings were only \$15,000. That resulted in a loss to him of over \$46,000. Mr. Dennard was unable to generate this income due to the injuries he suffered in March of 2012 that precluded him from being able to physically perform the duties that were required for him to do his job.

[Letter from Carr & Carr to Safeco, attached as Exhibit 11].

24. Roughly a month later, on June 4, 2015, Safeco denied Dennard's UM claim, basing its claims decision on evaluating his damages within the liability limits of the negligent driver. [Letter from Safeco to Carr & Carr, attached as Exhibit 12].

25. As stated previously, on July 23, 2015, Dennard underwent right shoulder arthroscopy with rotator cuff repair, distal clavicle excision, and subacromial decompression.

26. Several months later, on January 15, 2016, Dennard's counsel sent additional medical bills to Safeco related to Dennard's shoulder surgery and subsequent rehabilitation treatment. [Email from Carr & Carr to Safeco, attached as Exhibit 13].

27. Roughly a month later, on February 9, 2016, Safeco requested medical records for at least seven years prior to Dennard's March 2012 collision. Safeco stated that "[i]n light of Mr. Dennard's recent surgical procedure, we are not able to properly evaluate his claim without having records dating prior to the above-referenced accident." [Letter from Safeco to Carr & Carr, attached as Exhibit 14]. Dennard's counsel complied with Safeco's request on February 19, 2016. [Letter from Carr & Carr to Safeco, attached as Exhibit 15].

28. On April 15, 2016, Dennard's counsel sent Safeco an updated medical records schedule, and requested an update on the status of the claim. [Email from Carr & Carr to Safeco, attached as Exhibit 16]. Dennard also included a report that had been prepared by Dr. Avant, who performed Dennard's right shoulder surgery. Dr. Avant reviewed Dennard's medical records, including those prior to the accident, and determined that Dennard had received no formal treatment for his right shoulder before the collision in March 2012. Dr. Avant concluded that:

After thorough evaluation of the medical records that were forwarded to me, I do feel that [Plaintiff Dennard] likely had some underlying shoulder pathology which was causing him some intermittent symptoms, *but it is my medical opinion that his symptoms worsened after his MVA, which ultimately led to his need for operative intervention.* Upon review of those medical records, there were no significant treatment modalities previously directed towards his right shoulder pain, for which he ultimately came to be evaluated under me.

[Exhibit 17] (emphasis added).

29. On April 21, 2016, and despite Dr. Avant's report, Safeco *again* denied Dennard's UM claim, stating that "we are unable to establish a clear connection between this automobile accident and the shoulder surgery which took place 3 ½ years later." [Email from Safeco to Carr & Carr, attached as Exhibit 18].

30. Dennard's counsel emphasized to Safeco that Dennard's surgeon, Dr. Avant, specifically found that the shoulder surgery was related to the 2012 collision, and asked what evidence Safeco had that outweighed the opinion of Dennard's treating physician. [Email from Carr & Carr to Safeco, attached as Exhibit 19].

31. Safeco responded that Dennard had been treated for shoulder problems in the past, and stated that:

In the event this matter proceeds to trial, we will have an IME completed after we have been provided with all prior records. In the event the IME does not agree with my assessment of what has been provided, then we will revisit our value.

[Email from Safeco to Carr & Carr, attached as Exhibit 20].

32. Dennard incurred medical expenses in excess of \$104,000 and lost wages in excess of \$36,000.

33. Dennard provided Safeco with all medical bills and records related to the treatment of his injuries for the March 2012 collision and responded to all of Safeco's requests for additional information supporting his UM claim.



34. Finally, due to Dennard's need for a liver transplant and pressing concerns for his deteriorating health, Dennard's counsel requested arbitration in an attempt to get the UM claim resolved. Safeco rejected Dennard's request, stating that:

There is nothing that requires Safeco to participate in the arbitration. The policy states that both parties must agree to arbitration. Safeco does not agree to arbitration as previously indicated. We believe this claim should resolve within the limits of available coverage from the tortfeasor's carrier.

[Email from Safeco to Carr & Carr, dated December 19, 2016, attached as Exhibit 21]. Despite repeated requests by Dennard's counsel taking into consideration Dennard's health, Safeco has refused to reconsider its position.

#### **First Cause of Action**

##### **Breach of the Duty of Good Faith and Fair Dealing**

35. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth herein.

36. As an insurance company licensed to do business in the State of Oklahoma, Safeco is bound by Oklahoma statutory and common law to honor its contractual obligations to its insureds in good faith. As such, Safeco had and continues to have a duty to deal fairly and in good faith with Plaintiff Dennard, its insured.

37. Safeco breached its duty to deal fairly and in good faith with Plaintiff by failing to conduct a full, fair and unbiased investigation into the nature and extent of Plaintiff's injuries suffered in the collision at issue in this case. This includes a refusal by Safeco to consider all pertinent facts and circumstances of the collision and the full scope of Plaintiff's injuries, which resulted in Safeco unreasonably and wrongfully denying benefits properly owed to Dennard under the UM coverage.

38. Safeco breached its duty to deal fairly and in good faith with Plaintiff by requiring him to file suit before conducting an IME, which amounts to an inadequate investigation and evaluation as well as a speculative denial of his UM claim.

39. Safeco breached its duty to deal fairly and in good faith with Plaintiff by disregarding evidence weighing in favor of coverage. This includes but is not limited to ignoring Dr. Avant's opinion that Plaintiff's shoulder problems were worsened by the collision, while having no evidence to the contrary; therefore, putting Safeco's interests ahead of Plaintiff's.

40. As a result of Safeco's breach of its duty to deal fairly and in good faith, Plaintiff has suffered damages in excess of \$75,000.

41. Safeco's breach of the duty of good faith and fair dealing was intentional and malicious.

42. Punitive damages should be awarded against Safeco in an amount sufficient to punish Safeco and deter others.

WHEREFORE, Plaintiff James Michael Dennard prays for judgment in his favor and against Defendant Safeco Insurance Company of America in an amount in excess of \$75,000, plus interest, costs, fees and such other relief as the Court deems just and equitable.

Respectfully submitted,



Simone Gosnell Fulmer, OBA #17037

Harrison C. Lujan, OBA #30154

Jacob L. Rowe, OBA #21797

Amy H. Wellington, OBA #9467

FULMER GROUP PLLC

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and

Tye H. Smith, OBA #14595

CARR & CARR

1350 S.W. 89th Street

Oklahoma City, OK 73159

405/234-2110

405/234-2128 (Fax)

[tyesmith@carrokc.com](mailto:tyesmith@carrokc.com)

[cbrinkley@carrokc.com](mailto:cbrinkley@carrokc.com)

**ATTORNEYS FOR PLAINTIFF**

**ATTORNEY LIEN CLAIMED**

**JURY TRIAL DEMANDED**

HISTORY OF PRESENT ILLNESSName James "Mike" DominguezDate 4/18/12

Associated Signs and Symptoms: How would you describe your flexibility, discomfort, sleep habits and activity levels today, compared to before your last visit.

**Flexibility**

- ☐ Much Better  
☒ Somewhat Better  
☐ About the Same  
☐ Worse

**Discomfort / Pain**

- ☐ Much Better  
☒ Somewhat Better  
☐ About the Same  
☐ Worse

**Sleep Pattern**

- ☐ Much Better  
☐ Somewhat Better  
☐ About the Same  
☒ Worse

**Activity Levels**

- ☐ Much Better  
☒ Somewhat Better  
☐ About the Same  
☐ Worse

Severity: If "0" is no pain or discomfort and "10" is the worst pain or discomfort you've ever had, then how would you describe your pain or discomfort today. Please indicate on the scale below.

**Location & Quality:**

Please circle any areas that you are experiencing symptoms of: Pain, Tightness, Coldness, Weakness or Numbness.

**Modifying Factors:**

What activity increases the pain?-- Mark with [X]

What activity reduces the pain?--- Mark with [O]

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> [ ] Sitting    | <input checked="" type="checkbox"/> [ ] Standing |
| <input checked="" type="checkbox"/> [ ] Work       | <input type="checkbox"/> [O] Exercise (during)   |
| <input checked="" type="checkbox"/> [ ] Walking    | <input type="checkbox"/> [O] Exercise (after)    |
| <input checked="" type="checkbox"/> [ ] Lying down | <input type="checkbox"/> [O] Manipulation        |
| <input type="checkbox"/> [O] Medication _____      |  |
| <input type="checkbox"/> [ ] Other _____           |  |

Do you have any Questions?

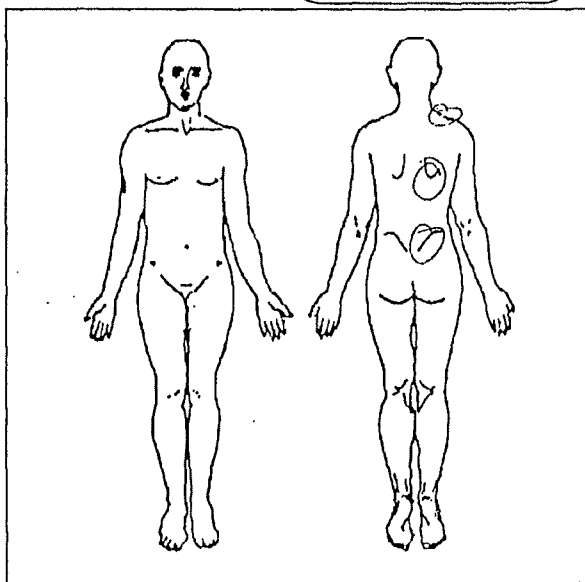
☒ No ☐ Yes, Please Note \_\_\_\_\_

Do you have any New Symptoms or Problems?

☐ No ☒ Yes, Please Describe \_\_\_\_\_

BELOW THE RIGHT SHOULDER.

PAIN & NUMBNESS



Office Use: Please, do not write below this line.

Hx & Chief Complaint

Progress Note Hx. - '03

EXHIBIT 1

2012



HISTORY OF PRESENT ILLNESSName James "Mike" Demarsh Date 9/7/12

Associated Signs and Symptoms: How would you describe your flexibility, discomfort, sleep habits and activity levels today, compared to before your last visit.

Flexibility	Discomfort / Pain	Sleep Pattern	Activity Levels
<input type="checkbox"/> Much Better	<input type="checkbox"/> Much Better	<input type="checkbox"/> Much Better	<input type="checkbox"/> Much Better
<input type="checkbox"/> Somewhat Better	<input type="checkbox"/> Somewhat Better	<input type="checkbox"/> Somewhat Better	<input type="checkbox"/> Somewhat Better
<input checked="" type="checkbox"/> About the Same	<input checked="" type="checkbox"/> About the Same	<input type="checkbox"/> About the Same	<input checked="" type="checkbox"/> About the Same
<input type="checkbox"/> Worse	<input type="checkbox"/> Worse	<input checked="" type="checkbox"/> Worse	<input type="checkbox"/> Worse

Severity: If "0" is no pain or discomfort and "10" is the worst pain or discomfort you've ever had, then how would you describe your pain or discomfort today. Please indicate on the scale below.

0 1 2 3 4 5 6 7 8 9 10

(6)

**Location & Quality:**Please circle any areas that you are experiencing symptoms of:  
Pain, Tightness, Coldness,  
Weakness or Numbness.**Modifying Factors:**

What activity increases the pain?-- Mark with [X]

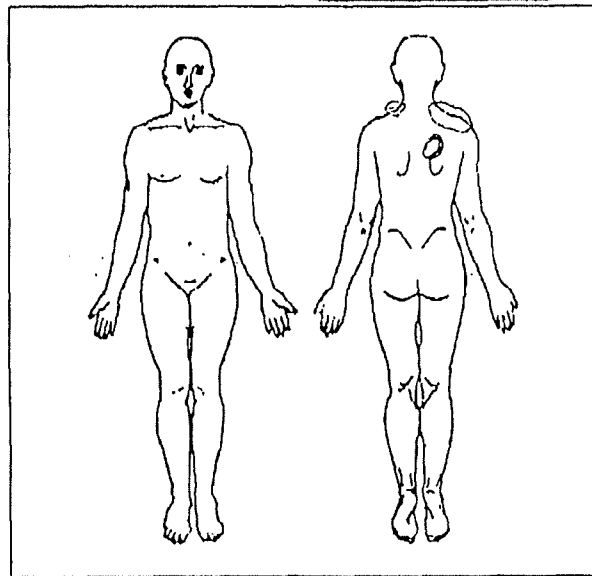
What activity reduces the pain?---- Mark with [O]

<input type="checkbox"/> [ ] Sitting	<input type="checkbox"/> [ ] Standing
<input type="checkbox"/> [ ] Work	<input type="checkbox"/> [ ] Exercise (during)
<input type="checkbox"/> [ ] Walking	<input type="checkbox"/> [ ] Exercise (after)
<input type="checkbox"/> [ ] Lying down	<input type="checkbox"/> [ ] Manipulation
<input type="checkbox"/> [ ] Medication	
<input type="checkbox"/> [ ] Other	

Do you have any Questions?

☒ No ☐ Yes, Please Note \_\_\_\_\_

Do you have any New Symptoms or Problems?

☒ No ☐ Yes, Please Describe \_\_\_\_\_

Office Use: Please, do not write below this line.

Hx &amp; Chief Complaint

C/O (R) Shoulder, (R) Neck, (R) scapula  
& (L) scapula & (L) neck pain.

Progress Note Hx. - '03



3115 SW 89th St  
Oklahoma City, OK 73159  
Phone: 405/424-5630  
Fax: 405/692-1632

**JAMES M DENNARD**

**Patient #: 0180188**

**DOB: [REDACTED]**

**Date of Service: 05/18/2012 08:59 AM**

**Provider: Jonathan B Stone, DO**

05/18/2012

Ross Pope, DO  
6510 S Western Ave 100  
Oklahoma City, OK 73139

Dear Dr. Pope:

I had the pleasure of seeing your patient, JAMES M DENNARD, today in followup. I want to keep you updated on the plans.

**Reason For Visit:**

The patient is a 51 year old male who presents for a recheck of low back pain. Changes since last visit include medical condition/hospitalization (Esophageal Varices Ruptured). Current treatment includes chiropractic care and independent exercises. The patient received 60% relief after the recent procedure. The progression has been gradually worsening. Exacerbating factors include changing positions. The patient reports that nothing relieves the pain. The patient describes the pain as being distributed 100% in the low back (b/i feet numbness, now C/O pain in upper back right side). The back pain does not radiate. The patient describes current pain level as 8/10. The low back pain is described as moderate. The low back pain is characterized as burning, sharp, aching, throbbing and shooting.

Note: He says that he didn't followup after the last injection, as he developed an esophageal varices and was hospitalized. He has started noting more pain in the lower neck and thoracic and periscapular areas. He says that he was parked on his street and was rear-ended. He says that the neck and thoracic pain started after that a few weeks ago. He is inconsistent with doing any home exercises, but stays busy with work. He takes hydrocodone to help with pain control.

Denies fever. No bowel or bladder problems. No new weakness or numbness.

PREVIOUS PROCEDURES:  
10/27/11 TFESI R L5 & S1 60% Relief

**Assessment:**

**LUMBOSACRAL NEURITIS OR RADICULITIS, UNSPEC (724.4)**  
**SPINAL STENOSIS, LUMBAR (724.02)**  
**DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC W/O MYELOPATHY, LRS (722.10)**  
**LUMBAR SPONDYLOSIS W/O MYELOPATHY (721.3)**  
**Myalgia and myositis (729.1)**

**Impression:**

Chronic low back pain related to spondylosis. The thoracic pain is myofascial and trigger point related.

**Current Plan:**

- Discussed and recommend home exercise program.
- Performed trigger point injections to the right upper trapezius, levator scapula and rhomboid muscles in the office today.
- Follow up in 2 weeks.

*We performed the trigger point injections in the office today. Depending on the results, we would consider repeating. If not improving, we will consider ordering a thoracic MRI. I demonstrated some home exercises and stretches for the thoracic and periscapular muscles he should do a few times weekly.*



3115 SW 89th St  
Oklahoma City, OK 73159  
Phone: 405/424-5630  
Fax: 405/692-1632

**JAMES M DENNARD**

**Patient #: 0180188**

**DOB: [REDACTED]**

**Date of Service: 06/01/2012 08:45 AM**

**Provider: Jonathan B Stone, DO**

06/01/2012

Ross Pope, DO  
6510 S Western Ave 100  
Oklahoma City, OK 73139

Dear Dr. Pope:

I had the pleasure of seeing your patient, JAMES M DENNARD, today in followup. I want to keep you updated on the plans.

**Reason For Visit:**

The patient is a 51 year old male who presents for a recheck of neck pain. Current treatment includes physical therapy, chiropractic care and independent exercises. The patient received 75% relief after the recent procedure. The progression has been gradually improving. Exacerbating factors include standing. The patient reports that nothing relieves the pain. The patient describes the pain as being distributed 100% in the right upper limb. The neck pain radiates to the right posterior shoulder and right anterior shoulder. The patient describes current pain level as 5/10. The neck pain is described as mild to moderate. The neck pain is characterized as aching, tenderness and causing shoulder pain.

Note: He says that the periscapular area has improved, but he is still having some upper posterior shoulder pain on the right. He reports that the OMT yesterday with Dr. Pope was really helpful. He is trying to do the home exercises and stay active. He still has some numbness to his feet, but feels like it is a little better.

Denies fever. No bowel or bladder problems. No new weakness or numbness.

PREVIOUS PROCEDURES:  
10/27/11 TFESI R L5 & S1 60% Relief  
5/18/12 TPI R Upper 75% relief

**Assessment:**

**Myalgia and myositis (729.1)**

**LUMBOSACRAL NEURITIS OR RADICULITIS, UNSPEC (724.4)**

**LUMBAR SPONDYLOSIS W/O MYELOPATHY (721.3)**

**DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC W/O MYELOPATHY, LRS (722.10)**

**SPINAL STENOSIS, LUMBAR (724.02)**

**Impression:**

Chronic low back pain related to spondylosis. He has myofascial trigger point related pain, with benefit after trigger point injections, but with residual pain that would benefit from a repeat injection.

**Current Plan:**

- Discussed and recommend home exercise program.
- Performed trigger point injections to the right upper trapezius and levator scapula muscles in the office today.
- FOLLOW UP IN 3 WEEKS

*We repeated the trigger point injections today. He will continue with the stretches. We discussed good blood sugar control. The steroids are likely to increase the blood sugar transiently, but should be back to his usual range. He says that his HgA1C runs around 7. This is too high. I think his foot numbness is likely related to peripheral polyneuropathy secondary to diabetes. The best thing for this is tight glycemic control. He voiced understanding. I'd like to see him back in about three weeks, or sooner, if problems arise.*



2069



POLICY NUMBER: Y7328098

# SAFECO INSURANCE COMPANY OF AMERICA AUTOMOBILE POLICY DECLARATIONS

NAMED INSURED:  
MIKE DENNARD  
RENE DENNARD  
13012 SW 51ST ST  
MUSTANG OK 73064-7918

RENEWAL

POLICY PERIOD FROM: NOV. 15 2011  
TO: MAY 15 2012

at 12:01 A.M. standard time at  
the address of the insured as  
stated herein.

AGENT:  
GLENN HARRIS & ASSOC INC  
PO BOX 21887  
OKLAHOMA CITY OK 73156-1887

AGENT TELEPHONE:  
(405) 842-5385

RATED DRIVERS	MIKE DENNARD, RENE DENNARD, ASHLEY DENNARD, MITCHELL DENNARD		
2001 CHEVROLET C1500 SUBURBAN 4 DOOR	ID# 3GNEC16T41G239043		
2005 CHEVROLET AVALANCHE K1500 4 DOOR	ID# 3GNEK12Z35G156920		
LOSS PAYEE	FAA EMPLOYEES CREDIT UNION		

Insurance is afforded only for the coverages for which limits of liability or premium charges are indicated.

COVERAGES	2001 CHEV LIMITS	PREMIUMS	2005 CHEV LIMITS	PREMIUMS
LIABILITY:				
BODILY INJURY	\$250,000 Each Person \$500,000 Each Occurrence	\$ 128.10	\$250,000 Each Person \$500,000 Each Occurrence	\$ 134.20
PROPERTY DAMAGE	\$500,000 Each Occurrence	95.80	\$500,000 Each Occurrence	91.00
COMPREHENSIVE	Actual Cash Value Less \$500 Deductible	48.80	Actual Cash Value Less \$500 Deductible	79.90
COLLISION	Actual Cash Value Less \$500 Deductible	120.20	Actual Cash Value Less \$500 Deductible	183.60
	TOTAL \$	392.90	TOTAL \$	488.70

You may pay your premium in full or in installments. There is no installment fee for the following billing plans: Full Pay, Annual 2-Pay. Installment fees for all other billing plans are listed below. If more than one policy is billed on the installment bill, only the highest fee is charged. The fee is:  
\$2.00 per installment for recurring automatic deduction (EFT)  
\$2.00 per installment for recurring credit card or debit card  
\$5.00 per installment for all other payment methods

EXHIBIT 3

-CONTINUED-

P O BOX 515097, LOS ANGELES, CA 90051



POLICY NUMBER: Y7328098

# **SAFECO INSURANCE COMPANY OF AMERICA** **AUTOMOBILE POLICY DECLARATIONS**

(CONTINUED)

**NAMED INSURED:**  
 MIKE DENNARD  
 RENE DENNARD  
 13012 SW 51ST ST  
 MUSTANG OK 73064-7918

**RENEWAL**

**POLICY PERIOD FROM:** NOV. 15 2011  
**TO:** MAY 15 2012

at 12:01 A.M. standard time at  
 the address of the insured as  
 stated herein.

**AGENT:**  
 GLENN HARRIS & ASSOC INC  
 PO BOX 21887  
 OKLAHOMA CITY OK 73156-1887

**AGENT TELEPHONE:**  
 (405) 842-5385

**RATED DRIVERS** MIKE DENNARD, RENE DENNARD, ASHLEY DENNARD, MITCHELL DENNARD

**2006 CHEVROLET TRAILBLAZER LS/LT 4 DOOR**

**ID# 1GNDT13S062271723**

Insurance is afforded only for the coverages for which limits of liability or premium charges are indicated.

COVERAGES	2006 CHEV LIMITS	PREMIUMS
<b>LIABILITY:</b>		
BODILY INJURY	\$250,000 Each Person \$500,000 Each Occurrence	\$ 134.90
PROPERTY DAMAGE	\$500,000 Each Occurrence	86.10
COMPREHENSIVE	Actual Cash Value Less \$500 Deductible	58.10
COLLISION	Actual Cash Value Less \$500 Deductible	200.20
	<b>TOTAL</b>	<b>\$ 479.30</b>

**UNINSURED MOTORISTS BODILY INJURY** \$ 145.80  
**TOTAL EACH VEHICLE:** 2001 CHEV \$ 392.90  
 2005 CHEV 488.70  
 2006 CHEV 479.30

<b>PREMIUM SUMMARY</b>		<b>PREMIUM</b>
VEHICLE COVERAGES		\$ 1,360.90
DISCOUNTS & SAFECO SAFETY REWARDS	You saved \$282.20	Included
POLICY COVERAGES		\$ 145.80
<b>TOTAL 6 MONTH PREMIUM FOR ALL VEHICLES</b>		<b>\$ 1,506.70</b>

You may pay your premium in full or in installments. There is no installment fee for the following billing plans: Full Pay, Annual 2-Pay. Installment fees for all other billing plans are listed below. If more than one policy is billed on the installment bill, only the highest fee is charged. The fee is:  
 \$2.00 per installment for recurring automatic deduction (EFT)  
 \$2.00 per installment for recurring credit card or debit card  
 \$5.00 per installment for all other payment methods

**YOU SAVED \$282.20 BY QUALIFYING FOR THE FOLLOWING DISCOUNTS:**  
 Account  
 Anti-Theft  
 Coverage

-CONTINUED-

P O BOX 515097, LOS ANGELES, CA 90051



POLICY NUMBER: Y7328098

**SAFECO INSURANCE COMPANY OF AMERICA  
AUTOMOBILE POLICY DECLARATIONS**

(CONTINUED)

Homeowners  
Multi-Car

YOUR POLICY INCLUDES UNINSURED MOTORISTS BODILY INJURY COVERAGE WITH LIMITS OF \$250,000 PER PERSON/\$500,000 PER ACCIDENT. WE CHARGE ONE PREMIUM FOR THIS COVERAGE REGARDLESS OF THE NUMBER OF VEHICLES ON YOUR POLICY. YOUR PREMIUM IS \$145.80.

1481X



A Liberty Mutual Company

Safeco Insurance Company of America

PO Box 515097  
Los Angeles, CA 90051-5097

Mailing Address:  
PO Box 515097  
Los Angeles, CA 90051-5097

Phone: (636) 326-8513  
Fax: (888) 268-8840

May 6, 2014

Carr & Carr Attorneys At Law  
1350 Sw 89th Street  
Oklahoma City, OK 73159

Insured Name: Mike Dennard Rene Dennard  
Policy Number: Y7328098  
Loss Date: March 30, 2012  
Claim Number: 924520065039  
Your Client: Mike Dennard

Dear Mrs. Susan Carr:

This is to advise you that as of May 6, 2014, claim # 924520065039 has been assigned to me for handling.

Please forward any correspondence directly to me at the above address.

If you have any questions or wish to discuss this matter, please contact me at one of the numbers below.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Geisler".

Jim Geisler

Safeco Insurance Company of America  
(636) 326-8515 Fax: (888) 268-8840  
James.Geisler@Safeco.com

## EXHIBIT 4

*Our Personal Insurance policyholders can go online to <http://www.safeco.com/accountservices> to check the status of their claim and update their policy 24 hours a day.*

**From:** Rhonda Jeffrey  
**To:** [james.geisler@safeco.com](mailto:james.geisler@safeco.com)  
**Cc:** Aimee Dorman-Peters; Rhonda Jeffrey  
**Subject:** Dennard, James Michael (Your claim Number: 9245 2006 5039)  
**Date:** November 05, 2014 4:25:50 PM  
**Attachments:** [Dennard - Estimates 6000-6011.pdf](#)  
[Dennard - Schedule A.pdf](#)  
[image001.jpg](#)

---

Mr. Geisler,

Pursuant to your telephone conference this afternoon regarding the matter above, please find attached Mr. Dennard's *Schedule A – Medical Bills*, and his property damage estimates.

Thank you very much in advance.



Rhonda L. Jeffrey  
Litigation Secretary  
1350 S.W. 89th Street  
Oklahoma City, OK 73159  
405/234-2121 (Direct)  
405/234-2199 (Fax)  
[rjeffrey@carrcarrokc.com](mailto:rjeffrey@carrcarrokc.com)

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**EXHIBIT 5**

---

**From:** Abt, Amy [<mailto:AMY.ABT@Safeco.com>]  
**Sent:** Thursday, January 15, 2015 12:49 PM  
**To:** Vickie Ryan  
**Subject:** Mike Dennard - Claim #924520065036

Ms. Ryan:

Mr. Dennard's claim has been transferred to me for further handling. Attached you will find a letter stating the same.

Could you please provide me with an update on the progress of the bodily injury claim with Geico? Has Mr. Dennard finished treating? Was a demand presented to Geico? Have there been any offers made to resolve the bodily injury claim? Do you anticipate a Underinsured Motorist claim will be made?

**Amy Abt, CPCU, SCLA, AIC, AIM**

Claims Specialist II

Safeco Insurance Company

PO Box 515097

Los Angeles, CA, 90051

Phone: 636-326-8964

Fax: 888-268-8840

Email: [amy.abt@safeco.com](mailto:amy.abt@safeco.com)

**EXHIBIT 6**

**From:** [Aimee Peters](#)  
**To:** [AMY.ABT@Safeco.com](mailto:AMY.ABT@Safeco.com)  
**Cc:** [Aimee Peters](#)  
**Subject:** FW: Mike Dennard - Claim #924520065036  
**Date:** February 02, 2015 12:29:01 PM  
**Attachments:** [Schedules.pdf](#)  
[Image003.jpg](#)

---

*Below please find correspondence from Tye Smith.*

Dear Ms. Abt,

Thank you for your communication. I must admit I am a bit at a loss by the last question posed in your letter, i.e. "Do you anticipate a Underinsured Motorist claim will be made?" We put your company on notice of underinsured motorist exposure long ago and were under the impression and assumption that Safeco had been going through the process of evaluating the claim ever since it was asserted. We have been expecting an offer any day, so the fact that you are just now asking if a UIM claim will be made is very troubling.

Geico has policy limits of \$50,000. They have refused to offer their limits, which is our demand. As the liability carrier for the other driver, they don't owe Mr. Dennard the obligation to make a fair evaluation of his claim, and they clearly are not. This is an underinsured claim. We would ask that you evaluate the claim and pay Mr. Dennard what he is owed as soon as possible. He is not able to get any meaningful treatment for his condition due to other health related issues that preclude him from getting the treatment he needs. As a result, he is in constant pain and misery and unable to get any significant relief by way of medical treatment. He has medical expenses of over \$17,000 to date and lost wages of over \$36,000. His special damages alone exceed the liability limits of the tortfeasor, without anything being considered for his pain and suffering. I have attached our Schedule A, B and C to help you appreciate the damages. We look forward to a prompt evaluation and offer in this case.



Tye H. Smith  
Attorney At Law  
1350 S.W. 89th Street  
Oklahoma City, OK 73159  
405/234-2118 (Direct)  
405/234-2199 (Fax)  
[tyesmith@carrocarokc.com](mailto:tyesmith@carrocarokc.com)

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**EXHIBIT 7**



LMG

2/9/2015 4:13:14 PM PAGE 1/002 Fax Server



# Fax

**To:** Tye Smith

**From:** Amy Abt

**Fax:** 1-405-234-2199

**Pages:** 02

**Phone:**

**Date:** Monday, February 09, 2015

**CC:**

## Comments:

Your Client: Mike Dennard

Amy Abt

636-326-8964

Fax: 888-268-8840

Email: amy.abt@safeco.com

EXHIBIT 8

Safeco Insurance Company of  
America

# Fax Transmittal

**From:** Amy Abt, AIS, AIC, SCLA, CPCU  
Safeco Insurance Company of America  
PO Box 515097  
Los Angeles, CA 90051  
(800) 332-3226  
**FAX:** 1-405-234-2199  
February 9, 2015

**To:** Carr & Carr Attorneys At Law

**Number of pages (including this form):** 1

**Comments:**

Your Client: Mike Dennard  
My Claim # 924520065039

Mr. Dennard:

I am not in a position to evaluate Mr. Dennard's claim as I have not been presented with a demand package. I have on file a list of medical bills submitted in November of 2014, but we have no medical reports. Your most recent correspondence suggests a wage loss claim of \$36,000 is also being presented, but we have no information regarding the wage loss. Please provide me with a complete demand (bills, records and wage loss support) and I will happily evaluate Mr. Dennard's claim and discuss with your office our position.

Amy Abt, CPCU, SCLA, AIC, AIM

**Confidentiality Notice:**

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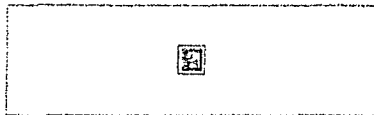
Thank you.

**From:** [Aimee Peters](#)  
**To:** [AMY.ABT@Safeco.com](mailto:AMY.ABT@Safeco.com)  
**Cc:** [Aimee Peters](#)  
**Subject:** RE: Mike Dennard - Claim #924520065036  
**Date:** February 25, 2015 8:36:29 PM  
**Attachments:** [Dennard 2095-2099.pdf](#)  
[Dennard 25.pdf](#)  
[image001.jpg](#)

---

Attached please find additional medical records, 2095-2099, and itemized statement, 025, regarding James Dennard.

We look forward to receiving your evaluation of this matter.



Aimee L. Peters  
Senior Litigation Paralegal  
1350 S.W. 89th Street  
Oklahoma City, OK 73159  
405/234-2117 (Direct)  
405/234-2199 (Fax)  
[apeters@carrcarrokc.com](mailto:apeters@carrcarrokc.com)

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**EXHIBIT 9**

**From:** Abt, Amy  
**To:** Aimee Peters  
**Subject:** Client: Mike Dennard - Our Claim # 924520065039  
**Date:** March 25, 2015 8:22:25 AM

---

Aimee:

I have reviewed the medical documentation for Mr. Dennard. I have some concerns with the wage loss information. Are you able to provide some rationale for the \$36K+ wage loss claim? Did his business close, if so, when? What were the requirements for his business that he was unable to fulfill as a result of this accident? Did he have any employees? Any information you can provide to help shed some light on the wage loss would be greatly appreciated.

**Amy Abt, CPCU, SCLA, AIC, AIM**

Claims Specialist II  
Safeco Insurance Company  
PO Box 515097  
Los Angeles, CA, 90051  
Phone: 636-326-8964  
Fax: 888-268-8840  
Email: amy.abt@safeco.com

**EXHIBIT 10**

Eugene Carr (1922-1992)  
Patrick E. Carr<sup>1,2</sup>  
Michael Carr<sup>1,2</sup>  
A. Laurie Kollar<sup>1,2,3</sup>  
Raymond Allred<sup>1,4</sup>  
Bryce A. Hill, Of Counsel<sup>1</sup>  
† - A Professional Corporation

# Carr & Carr

## Attorneys at Law

OKLAHOMA CITY

May 13, 2015

Tye H. Smith<sup>1</sup>  
Brent D. Berry<sup>1</sup>  
Greg Smart<sup>1</sup>  
Stephen A. Dotter<sup>1</sup>  
Thomas K. Ventura<sup>1</sup>  
Gary R. Morris, Of Counsel<sup>1</sup>  
1 - Licensed in Oklahoma  
2 - Licensed in Arkansas  
3 - Licensed in Missouri  
4 - Licensed in Texas

Safeco  
Amy Abt  
PO Box 515097  
Los Angeles, CA 90051  
VIA EMAIL: [amy.abt@safeco.com](mailto:amy.abt@safeco.com)  
and REGULAR MAIL

RE:	Our Client:	James Michael Dennard
	Your Insured:	James Michael Dennard
	D/O/L:	March 30, 2012
	Your Claim No.:	924520065039
	Our File No.:	39057

Dear Ms. Abt:

Mr. Dennard was the sole income producer for Michael Dennard Homes. He generated income for Michael Dennard Homes working as both a home builder and also doing independent adjusting for insurance companies on various types of claims. As you can see from the tax returns for the years leading up to this collision, he had an established business with reliable and substantial income. However, when he was hurt in this collision on 3/30/12, he was physically unable to do the activities that were required of him to complete the field adjusting and home building. As a result, his income fell off substantially in 2012.

Below is a detailed account of his income in the three years before the collision and the year of his collision. Please disregard the numbers previously sent to you in this regard. After speaking to Mr. Dennard's tax preparer, I now have a better understanding of his income and how to accurately describe it to you.

**OKLAHOMA CITY**  
1350 S.W. 89<sup>th</sup>  
Oklahoma City, OK 73159-6352  
405.691.1600 800.296.6074  
Fax 405.691.2128

**TULSA**  
4416 South Harvard Avenue  
Tulsa, OK 74135-2605  
918.747.1000 800.777.4878  
Fax 918.747.7284

**NORTHWEST ARKANSAS**  
2002 South 48th Street, Suite D  
Springdale, AR 72762  
479.770.0613 800.777.4878  
Fax 479.770-0754

[www.CarrCarr.com](http://www.CarrCarr.com)

**EXHIBIT 11**

DENNARD/SAFECO

May 13, 2015

Page Two

His rounded off income was as follows:

2009: \$108,000 Gross income for Dennard Homes  
2009: \$24,000 Compensation to Michael from Dennard Homes  
2009: \$70,000 Income from net profit of Michael Dennard Homes as shown on Schedule K  
**2009 Total Income to Michael Dennard: \$94,000**

2010: \$68,000 Gross Income for Dennard Homes  
2010: \$26,000 Compensation to Michael from Dennard Homes  
2010: \$22,000 Income from net profit of Michael Dennard Homes as shown on Schedule K  
**2010 Total Income to Michael Dennard: \$48,000**

2011: \$97,000 Gross Income for Dennard Homes  
2011: \$32,000 Compensation to Michael from Dennard Homes  
2011: \$10,000 Income from net profit of Michael Dennard Homes as shown on Schedule K  
**2011 Total Income to Michael Dennard: \$42,000**

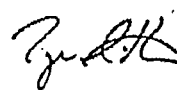
2012: \$14,000 Gross Income for Dennard Homes  
2012: \$1,200 Compensation to Michael from Dennard Homes  
2012: -0- income from net profit of Michael Dennard Homes as shown on Schedule K  
**2012 Total Income to Michael Dennard: \$15,000**

Based upon a three year average leading up to 2012, Mr. Dennard averaged income of over \$61,000 per year. In 2012, his earnings were only \$15,000. That resulted in a loss to him of over \$46,000. Mr. Dennard was unable to generate this income due to the injuries he suffered in March of 2012 that precluded him from being able to physically perform the duties that were required for him to do his job.

At the beginning of 2013, Mr. Dennard became disabled due to reasons we are unable to connect to this collision. So the last time he earned any income was in the time frame leading up to this collision in March of 2012. We are asking that he be compensated for the income loss he suffered in 2012 since it was a direct result of the injuries he suffered in this collision.

Please advise if you need anything further.

Very truly yours,  
Carr & Carr, Attorneys



Tye H. Smith  
Attorney at Law  
Direct Line: (405) 234-2118  
[tyesmith@carrcarrokc.com](mailto:tyesmith@carrcarrokc.com)

enc.

LMG

6/4/2015 3:33:20 PM PAGE 1/002 Fax Server



# Fax

**To:** Tye Smith

**From:** Amy Abt

**Fax:** 1-405-691-2128

**Pages:** 02

**Phone:**

**Date:** Thursday, June 04, 2015

**CC:**

## Comments:

Your Client: James Michael Dennard

**EXHIBIT 12**

LMG

6/4/2015 3:33:20 PM PAGE 2/002 Fax Server



A Liberty Mutual Company

Safeco Insurance Company of America  
Casualty Specialist II  
PO Box 515097  
Los Angeles, CA 90051

Mailing Address:  
PO Box 515097  
Los Angeles, CA 90051

Phone: (800) 332-3226  
(636) 326-8964  
Fax: (888) 268-8840

June 4, 2015

Carr & Carr Attorneys At Law  
1350 Sw 89th Street  
Oklahoma City, OK 73159

Insured Name: Mike Dennard Rene Dennard  
Policy Number: Y7328098  
Loss Date: March 30, 2012  
Claim Number: 924520065039  
Your Client: James Michael Dennard

Dear Mr. Tye Smith:

Thank you for submitting clarification of Mr. Dennard's income loss. After reviewing all the information available to us, we believe the value of Mr. Dennard's claim falls within the available underlying bodily injury limit.

If you have any questions, please feel free to contact me.

Sincerely,

*Amy Abt*

Amy Abt, AIS, AIC, SCLA, CPCU  
Casualty Specialist II  
Safeco Insurance Company of America  
(800) 332-3226 Ext: 628964  
(636) 326-8964 Fax: (888) 268-8840  
amy.abt@safeco.com



**From:** Valerie Sanders  
**To:** "amy.abt@safeco.com"  
**Subject:** Mike Dennard - Claim #924520065036  
**Date:** January 15, 2016 6:00:33 PM  
**Attachments:** 026-044.pdf  
image001.jpg  
Schedule A.PDF  
Schedule B.PDF  
2100-2278.pdf

---

Ms. Abt:

Attached please find additional medical bills, Bates-numbered 026-044, and updated Schedule A. Also attached are updated medical records, Bates-numbered 2100-2278, and updated Schedule B.

Given that Mr. Dennard has undergone shoulder surgery due to his injuries and the significant increase to his medical expenses as a result, we look forward to receiving your updated evaluation of his underinsured motorist claim. Should you have any questions, please don't hesitate to call.

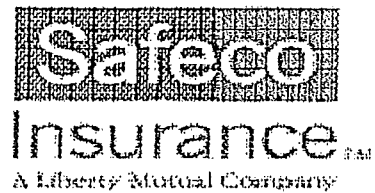


Valerie C. Sanders  
Litigation Paralegal  
1350 S.W. 89th Street  
Oklahoma City, OK 73159  
405/234-2119 (Direct)  
405/234-2199 (Fax)  
[vsanders@carrcarrokc.com](mailto:vsanders@carrcarrokc.com)

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**EXHIBIT 13**



# Fax

**To:** Mr. Carr

**From:** Amy Abt

**Fax:** 1-405-234-2199

**Pages:** 02

**Phone:**

**Date:** Tuesday, February 09, 2016

**CC:**

**Comments:**

Client: James Michael Dennard

**EXHIBIT 14**



A Liberty Mutual Company

Safeco Insurance Company of America  
Senior Claims Resolution Specialist I  
PO Box 515097  
Los Angeles, CA 90051

Mailing Address:  
PO Box 515097  
Los Angeles, CA 90051

Phone: (800) 332-3226  
(636) 326-8964  
Fax: (888) 268-8840

February 9, 2016

Carr & Carr Attorneys At Law  
1350 Sw 89th Street  
Oklahoma City, OK 73159

Insured Name: Mike Dennard Rene Dennard  
Policy Number: Y7328098  
Loss Date: March 30, 2012  
Claim Number: 924520065039  
Your Client: James Michael Dennard

Dear Mr. Carr & Carr Attorneys At Law:

We acknowledge receipt of additional medical documentation submitted on behalf of your client, Mike Dennard. In light of Mr. Dennard's recent surgical procedure, we are not able to properly evaluate his claim without having records dating prior to the above-referenced accident.

Please gather and forward medical records for at least 7 years prior to our accident from all medical providers including, but not limited to, Back and Posture and Dr. Stone.

If you have any questions, please feel free to contact me.

Sincerely,

*Amy Abt*

Amy Abt, AIS, AIC, SCLA, CPCU  
Senior Claims Resolution Specialist I  
Safeco Insurance Company of America  
(800) 332-3226 Ext: 628964  
(636) 326-8964 Fax: (888) 268-8840  
amy.abt@safeco.com

Eugene Carr (1922-1992)

Patrick E. Carr<sup>1,2</sup>

Michael Carr<sup>1,2</sup>

A. Laurie Koller<sup>1,2,3</sup>

Jack Beesley<sup>1</sup>

Erik S. Houghton<sup>1</sup>

Bryce A. Hill, Of Counsel<sup>1</sup>

<sup>1</sup> - A Professional Corporation

<sup>1</sup> - Licensed in Oklahoma

<sup>2</sup> - Licensed in Arkansas

<sup>3</sup> - Licensed in Missouri

<sup>4</sup> - Licensed in Texas

<sup>5</sup> - Licensed in Georgia & West Virginia

# Carr & Carr

## Attorneys at Law

Oklahoma City

Tye H. Smith<sup>1</sup>

Brent D. Berry<sup>1</sup>

Greg Smart<sup>1</sup>

Stephen A. Dotter<sup>1</sup>

Thomas K. Ventura<sup>1</sup>

Christopher L. Brinkley<sup>1,2,3,5</sup>

Gary R. Morris, Of Counsel<sup>1</sup>

February 19, 2016

Amy Abt  
Safeco  
PO Box 515097  
Los Angeles, CA 90051

Re: Our Client: James Michael Dennard  
Date of Loss: 3/30/2012  
Our File #: 39057  
Claim #: 924520065039

Dear Ms. Abt:

We are in receipt of your letter, requesting Mr. Dennard's related medical records for seven years prior to the date of the accident. Accordingly, enclosed you will please find a CD containing the following medical records:

<u>PROVIDER</u>	<u>BATES NOS</u>
Curtis Brown, M.D.	7027-7029; 7040-7041; 7071-7072
DeLong Chiropractic	7087-7089
Back & Posture Clinic	7260-7280
Deaconess Hospital MRI	7281-7291
Community Hospital	7326-7348
Jonathan Stone, D.O.	7324-7325

Additionally, enclosed please find updated medical records regarding Mr. Dennard's post-accident treatment, bates-numbered 2279-2317, and medical bills bates-numbered 050-059, as well as updated *Schedule A* and *Schedule B*.

**OKLAHOMA CITY**  
1350 S.W. 89<sup>th</sup>  
Oklahoma City, OK 73159-6352  
405.691.1600 800.296.6074  
Fax 405.691.2128

**TULSA**  
4416 South Harvard Avenue  
Tulsa, OK 74135-2605  
918.747.1000 800.777.4878  
Fax 918.747.7284

**NORTHWEST ARKANSAS**  
2002 South 48th Street, Suite D  
Springdale, AR 72762  
479.770.0613 800.777.4878  
Fax 479.770.0754

www.CarrCarr.com

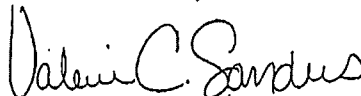
**EXHIBIT 15**

Amy Abt  
Safeco  
February 19, 2016  
Page 2 of 2

We look forward to receiving your updated evaluation.

Very truly yours,

CARR & CARR, ATTORNEYS

A handwritten signature in black ink that reads "Valerie C. Sanders". The signature is written in a cursive, flowing style.

Valerie C. Sanders  
Litigation Paralegal  
Direct: (405) 234-2119  
[vsanders@carrcarrokc.com](mailto:vsanders@carrcarrokc.com)

Enclosures

**From:** [Valerie Sanders](#)  
**To:** [AMY.ABT@Safeco.com](mailto:AMY.ABT@Safeco.com)  
**Cc:** [Tiffany M. Manning](#)  
**Subject:** RE: Dennard, James Michael (Your Claim# 924520065039)  
**Date:** April 05, 2016 3:48:09 PM  
**Attachments:** [2317 - Black.pdf](#)  
[image001.jpg](#)  
[image002.jpg](#)  
[2318-2319 - Avant.pdf](#)  
[2315-2316 - Black.pdf](#)  
[Schedule B.pdf](#)

---

Ms. Abt,

Attached you will please find additional medical records, Bates-numbered 2315-2319, and an updated *Schedule B – Medical Records*, on our client, Mr. Dennard, with regard to the above referenced claim. This includes the report of his treating physician, Dr. Avant.

When you have had the opportunity to review these, please contact Tye Smith in order that you may discuss this matter. Thank you.



Valerie C. Sanders  
Litigation Paralegal  
1350 S.W. 89th Street  
Oklahoma City, OK 73159  
405/234-2119 (Direct)  
405/234-2199 (Fax)  
[vsanders@carrcarrokc.com](mailto:vsanders@carrcarrokc.com)

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**EXHIBIT 16**



Orthopaedics and  
Sports Medicine  
Anthony E. Cruse, D.O.

Orthopaedics and  
Foot & Ankle  
R. F. Langerman, Jr., D.O.

Plastic, Hand and  
Reconstructive Surgery  
Mehdi N. Adham, M.D.

Orthopaedics and  
Sports Medicine  
Daniel J. Jones, M.D.

General Orthopaedics  
Derek L. West, D.O.

General Orthopaedics  
Shoulder Reconstruction  
Brian A. Levings, D.O.

General Orthopaedics  
Ankle Reconstruction  
Brad Reddick, D.O.

Orthopaedic Spine Surgery  
C. Shane Hume, D.O.

Hand, Upper Extremity  
Orthopaedic Surgery  
Kristopher Avant, D.O.

Orthopaedics and  
Sports Medicine  
Matthew Diesselhorst, M.D.

Physicians Assistants  
Jayme Royston, PA-C, MHS  
Keri Borrer, PA-C, MHS

Angie Waples, PA-C, MHS  
Joe Bourland, PA-C

Julie Jones, PA-C, MPAS  
Scott Hassell, PA-C, MHS

Jaime Sanford, PA-C, MHS  
Heather Lyles, PA-C, MHS

Nicole Carroll, PA-C, MSM  
Ian Gordon, PA-C, MHS

B. Adrian Paredes, PA-C, MHS  
Kyle Hollingsworth, PA-C, MHS

To whom it concerns regarding James Michael Dennard:

On 7/23/2015, Mr. Dennard underwent right shoulder arthroscopy with rotator cuff repair, distal clavicle excision, and subacromial decompression with proximal biceps tenotomy; please see previously dictated operative report.

Mr. Dennard's first clinical evaluation by me was on 4/13/2015. Upon his initial presentation, he reported a motor vehicle accident on 3/30/2012. He states that since that time, he has experienced a lot of pain and significant decreased range of motion of the right shoulder. He had some previous treatment which consisted of an ESI and trigger point injection by Dr. Stone, and previous manipulation with Dr. Ross Pope. Prior to being seen by me, he also had an MRI of the C-spine, but no formal imaging of his shoulder.

I was able to review his previous medical records, which did demonstrate some previous application for treatment on 12/19/05 with Dr. DeLong. Records of that date did demonstrate some bilateral shoulder pain and lower back pain, with previous surgical intervention on his lumbar spine. Throughout these records, it appears that he was treated with some bilateral foot orthotics and underwent some manipulation, but I do not see any formal treatment regarding his shoulders.

I do have a note from Dr. Curtis Brown dated 8/3/2006, in which the patient did report significant back pain, elbow pain, and shoulder pain; however, there was no formal assessment or treatment plan regarding his shoulder at that time.

Records from a visit to Dr. Pope on 7/26/2011 demonstrate that he did have some aches and pains in bilateral shoulders. He did report previous back surgery in July 1997, for a ruptured L5-S1 disc.

On 8/10/2011, his complaints to Dr. Pope consisted of right hip and low back pain; there is no evaluation of the upper extremity reflected in these medical records.

On 8/25/2011, he did report some right shoulder pain on his patient intake form, but again there was no formal treatment directed at this body part.

On 9/27/2011, he complained only of right hip and low back pain, and received the appropriate treatment for these conditions.

8100 South Walker #A  
Oklahoma City, OK 73139  
Phone 405.632.4468  
Fax 405.632.0436

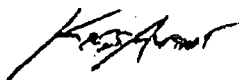
1805 Commons Circle  
Suite 100-C  
Yukon, OK 73099  
Phone 405.265.0165  
Fax 405.265.0897

**EXHIBIT 17** 2506 N. Harrison Ave.  
Shawnee, OK 74804  
Phone 405.395.9050  
Fax 405.395.9630

We obtained an MRI on 4/17/2015, which did demonstrate diffuse partial thickness tearing approximate 40% of the supraspinatus, with a detached displaced tear of the posterior superior labrum at 11:00. There was some mild tendinosis without tear involving the long biceps tendon, and some moderate AC joint osteoarthritis. Due to his significant medical comorbidities, there was significant delay in being able to proceed with his operative intervention.

After thorough evaluation of the medical records that were forwarded to me, I do feel that he likely had some underlying shoulder pathology which was causing him some intermittent symptoms, but it is my medical opinion that his symptoms worsened after his MVA, which ultimately led to his need for operative intervention. Upon review of those medical records, there were no significant treatment modalities previously directed towards his right shoulder pain, for which ultimately he came to be evaluated under me.

All medical opinions as contained in this report are within a reasonable degree of medical certainty. I declare under the penalty of perjury that I have examined the above statements, and to the best of my knowledge, they are true, accurate and complete.



Kristopher Avant, DO  
Hand & Upper Extremity  
405-632-4468  
8100 S. Walker  
Oklahoma City, OK 73139



**From:** Abt, Amy  
**To:** Valerie Sanders  
**Cc:** CLMATT  
**Subject:** Dennard, James Michael - Claim # 924520065039  
**Date:** April 21, 2016 2:24:25 PM

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Ms. Sanders:

We have reviewed all new information provided for Mr. Dennard's claim. Based on the information provided, we are unable to establish a clear connection between this automobile accident and the shoulder surgery which took place 3 ½ years later. At this time, we are not in a position to extend an offer to Mr. Dennard.

**Amy Abt, CPCU, SCLA, AIC, AIM**

Sr Claim Resolution Specialist I  
Safeco Insurance Company  
PO Box 515097  
Los Angeles, CA, 90051  
Phone: 636-326-8964  
Fax: 888-268-8840  
Email: amy.abt@safeco.com

**EXHIBIT 18**

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**From:** Tye Smith  
**Sent:** Thursday, May 26, 2016 3:05 PM  
**To:** Abt, Amy  
**Cc:** CLMATT

**EXHIBIT 19**

**Subject:** Re: Dennard, James Michael (Your Claim# 924520065039)

His surgeon says it was related. What evidence do you have that outweighs his opinion?

On May 26, 2016, at 8:32 AM, Abt, Amy  
<[AMY.ABT@Safeco.com](mailto:AMY.ABT@Safeco.com)> wrote:

Tye:

As per my 04/21/16 email, we have reviewed all the information provided and we are unable to establish a clear connection between this accident and the shoulder surgery completed 3 ½ years after the loss. We are not in a position to make any offers to Mr. Dennard for his claim.

**Amy Abt, CPCU, SCLA, AIC,  
AIM**

Sr Claim Resolution Specialist I  
Safeco Insurance Company  
PO Box 515097  
Los Angeles, CA, 90051  
Phone: 636-326-8964  
Fax: 888-268-8840  
Email: [amy.abt@safeco.com](mailto:amy.abt@safeco.com)

**From:** "Abt, Amy" <AMY.ABT@Safeco.com>  
**Date:** July 13, 2016 at 8:10:05 AM CDT  
**To:** Tye Smith <tyesmith@carrocc.com>  
**Cc:** CLMATT <CLMATT@LibertyMutual.com>  
**Subject:** RE: Dennard, James Michael (Your Claim# 924520065039)

Mr. Smith:

At this point we are unable to establish a connection between the automobile accident of March 30, 2012, and the shoulder surgery of July 2015. This accident resulted in \$1837.00 to your client's vehicle. Furthermore, your client treated for shoulder problems in 2005, 2006 and 2011. In the event this matter proceeds to trial, we will have an IME completed after we have been provided with all prior records. In the event the IME does not agree with my assessment of what has been provided, then we will revisit our value.

**Amy Abt, CPCU, SCLA, AIC, AIM**

Sr Claim Resolution Specialist I  
Safeco Insurance Company  
PO Box 515097  
Los Angeles, CA, 90051  
Phone: 636-326-8964  
Fax: 888-268-8840  
Email: [amy.abt@safeco.com](mailto:amy.abt@safeco.com)

**From:** "Abt, Amy" <[AMY.ABT@Safeco.com](mailto:AMY.ABT@Safeco.com)>  
**Date:** December 19, 2016 at 12:27:22 PM CST  
**To:** Tye Smith <[tyesmith@carrcarrokc.com](mailto:tyesmith@carrcarrokc.com)>  
**Cc:** CLMATT <[CLMATT@LibertyMutual.com](mailto:CLMATT@LibertyMutual.com)>  
**Subject:** RE: Dennard, James Michael (Your Claim# 924520065039)

Mr. Smith:

**EXHIBIT 21**

Our policy wording regarding arbitration is as follows:

ARBITRATION

A. If we and an insured do not agree:

1. Whether that insured is legally entitled to recover damages; or
2. As to the amount of damages which are recoverable by that insured;

from the owner or operator of an uninsured motor vehicle or underinsured motor vehicle

then the matter may be arbitrated. However, disputes concerning coverage under this Part

may not be arbitrated.

Both parties must agree to arbitration. If so agreed, each party will select an arbitrator. The

two arbitrators will select a third. If they cannot agree within 30 days, either may request that

selection be made by a judge of a court having jurisdiction.

B. Each party will:

1. Pay the expenses it incurs; and
2. Bear the expenses of the third arbitrator equally.

C. Unless both parties agree otherwise, arbitration will take place in the county in which the insured

lives. Local rules of law as to procedure and evidence will apply. A decision agreed to by two

or the arbitrators will be binding. A decision agreed to by two of the arbitrators will be binding

as to:

1. Whether the insured is legally entitled to recover damages; and
2. The amount of damages. This applies only if the amount does not exceed the

minimum limit for bodily injury liability specified by the financial responsibility law

of Oklahoma. If the amount exceeds that limit, either party may demand the right to

a trial. This demand must be made within 60 days of the arbitrators' decision. If this

demand is not made, the amount of damages agreed to by the arbitrators will

be binding.

D. If agreement by arbitration is not reached within 3 months from the date of demand, the insured

May bring an action against anyone responsible for the use of a vehicle involved in the accident.

There is nothing that 'requires' Safeco to participate in the arbitration. The policy states that both parties must agree to arbitration. Safeco does not agree to participate in arbitration as previously indicated. We believe this claim should resolve within

the limits of available coverage from the tortfeasor's carrier.

**Amy Abt, CPCU, SCLA, AIC, AIM**

Sr Claim Resolution Specialist I

Safeco Insurance Company

PO Box 515097

Los Angeles, CA, 90051

Phone: 636-326-8964

Fax: 888-268-8840

Email: [amy.abt@safeco.com](mailto:amy.abt@safeco.com)